

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In re:

Peabody Energy Corporation, et al.,  
Debtors.<sup>1</sup>

Case No. 16-42529  
CHAPTER 11

(Joint Administration Requested)

Hearing Date and Time:  
TBD

Hearing Location:  
TBD

**MOTION OF THE DEBTORS AND DEBTORS IN  
POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE CONTINUATION AND ASSUMPTION OF  
THE ADM AGREEMENT AND (II) GRANTING RELATED RELIEF**

Peabody Energy Corporation ("PEC") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), hereby move this Court, pursuant to sections 105(a), 363, 364 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of interim and final orders (a) authorizing the continuation and assumption of the ADM Agreement (as defined below), and (b) granting related relief, and in support thereof, respectfully represent as follows:<sup>2</sup>

**Jurisdiction and Venue**

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States

<sup>1</sup> The Debtors and their employer identification numbers are listed on Schedule 1 attached hereto. The addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

<sup>2</sup> Copies of the proposed orders will be made available on the Debtors' case website at <http://www.kccllc.net/peabody>.

District Court for the Eastern District of Missouri. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

2. On April 13, 2016 (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Debtor PEC is a Delaware corporation headquartered in St. Louis, Missouri. PEC was incorporated in 1998 and became a public company in 2001. Each of the other Debtors is a wholly-owned direct or indirect subsidiary of PEC.

4. PEC is the world's largest private-sector coal company (by volume), with 26 active coal mining operations located in the United States and Australia. The Debtors' domestic mines produce and sell thermal coal, which is primarily purchased by electricity generators. PEC's Australian operations mine both thermal and metallurgical coal, a majority of which is exported to international customers. As of December 31, 2015, Debtor PEC and its subsidiaries' property holdings include 6.3 billion tons of proven and probable coal reserves and approximately 500,000 acres of surface property through ownership and lease agreements. In the United States alone, as of December 31, 2015, the Debtors held an estimated 5.5 billion tons of proven and probable coal reserves, and the Debtors generated sales of approximately 180 million tons of coal. In addition to its mining operations, the Debtors market and broker coal from other coal producers across the United States, Australia, Europe and Asia.

5. The Debtors operate in a competitive and highly regulated industry that has experienced strong headwinds and precipitously declining demand and pricing in recent

years due to the rise of low priced alternative energy sources – including an abundance of natural gas. Combined with these factors, slowing global economic growth drove a wide range of goods prices lower in 2015 and resulted in the largest broad market decline since 1991. Indeed, demand from electric utilities in the United States alone declined approximately 110 million tons in 2015. These market conditions, in connection with lower realized pricing in the United States and Australia, resulted in a 21.0 million ton decline in the Debtors' and their non-debtor subsidiaries' coal sales during 2015. As a result of these challenges, several large United States coal companies have filed for chapter 11 protection in recent years.

6. A comprehensive description of the Debtors' businesses and operations, capital structure and the events leading to the commencement of these chapter 11 cases can be found in the Declaration of Amy Schwetz, Executive Vice President and Chief Financial Officer of Debtor PEC, in Support of First Day Pleadings of Debtors and Debtors in Possession (the "First Day Declaration"), which was filed contemporaneously herewith and is incorporated herein by reference.

#### **The Debtors' Clearing Activities**

7. In addition to mining operations, the Debtors and their non-Debtor affiliates market and broker coal from other coal producers, both as principal and agent, and trade coal and freight related contracts through trading and business offices in Australia, China, Germany, India, Indonesia, the United Kingdom and the U.S (the "Trading and Brokerage Business"). Coal brokering is conducted both as principal and agent in support of various coal production-related activities that may involve coal produced from the company's mines, coal sourcing arrangements with third-party mining companies or offtake agreements with other coal producers. The Trading and Brokerage segment also provides transportation-related services, which involve both financial derivative contracts and physical contracts.

8. In connection with the Trading and Brokerage Business, the Debtors and their non-Debtor affiliates enter into exchanged-settled transactions on various exchanges, including the Chicago Mercantile Exchange (CME) Group, Intercontinental Exchange (ICE), LCH.Clearnet (formerly known as the London Clearing House), NOS Clearing ASA and Singapore Exchange (SGX). To transact on an exchange, one must be an exchange member. Accordingly, the Debtors generally consummate their exchanged-settled transactions through a clearing agreement (the "ADM Agreement") with ADM Investor Services, Inc. ("ADM").

9. The Debtors' clearing relationship with ADM requires the Debtors to satisfy certain initial and variation margin requirements. Initial margin is the margin that the Debtors are required to pay to be able to initially buy or sell a futures contracts. Variation margin, on the other hand, is the additional margin that ADM requires of its clients based on daily changes in the value of our positions. As of the Petition Date, the Debtors' obligations to ADM were fully collateralized through the posting of cash margin.

10. The Debtors desire to continue their Trading and Brokerage Business in the ordinary course post-bankruptcy. In order to continue this business, the Debtors must be free to honor margin calls, if any, associated with their prepetition trades, including margin calls based on post-bankruptcy price movements. In addition, the Debtors must be free, in their business judgment, to enter into new trades, post the associated margin and otherwise transact and perform their obligations under the ADM Agreement and exchange rules.

### **Argument**

#### ***The Debtors Enter Into and Perform Under Cleared Transactions in the Ordinary Course of Business***

11. The Debtors believe that performing under the ADM Agreement is within the ordinary course of their business and that they can consummate transactions under the ADM

Agreement on a postpetition basis without notice and a hearing. Nonetheless, ADM may be unwilling to do business with the Debtors without specific authorization from the Court for such transactions. Indeed, courts have granted similar relief in other major coal company reorganizations and other cases. See, e.g., In re Arch Coal, Inc., No. 16-40120 (Bankr. E.D. Mo. Jan. 14, 2016) (Docket No. 84); In re Patriot Coal Corp., No. 12-12900 (Bankr. S.D.N.Y. Aug. 16, 2012) (Docket No. 365); accord In re Energy Future Holdings Corp., No. 14-10979 (Bankr. D. Del. June 6, 2014) (Docket No. 860); In re AMR Corp., No. 11-15463 (Bankr. S.D.N.Y. Dec. 22, 2011) (Docket No. 433).<sup>3</sup>

12. As a consequence, counterparties have come to expect that debtors that wish to enter into trading transactions will seek and obtain such relief. Thus, out of an abundance of caution, the Debtors request that the Court determine that the performance of the ADM Agreement and entering into transactions under such agreement are "ordinary course transactions" within the meaning of section 363(c)(1) of the Bankruptcy Code, or, in the alternative, grant the Debtors authority pursuant to section 363(b)(1) of the Bankruptcy Code to enter into transactions and perform under the ADM Agreement without further order of the Court.

13. To effectively manage the risks inherent in the Debtors' businesses, the Debtors must also be able to continue to perform under the ADM Agreement on an uninterrupted basis postpetition. Further, the Debtors must be able to maintain the confidentiality of the basic terms of such transactions. Given the confidential and immediate nature of entering into transactions under the ADM Agreement, it is impractical and counterproductive to require the Debtors to seek separate approval with respect to each such transaction.

---

<sup>3</sup> Unreported orders cited herein are not attached to this Motion. Copies of these orders will be made available to the Court or other parties upon request made to the Debtors' counsel.

14. Pursuant to section 363 of the Bankruptcy Code, a debtor, as debtor in possession, is authorized to "enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363(c) "strik[es] the optimal balance between the interests of the debtors and the creditors" to "serve the 'overriding goal of maximizing the value of the estate.'" Habinger, Inc. v. Metro. Cosmetic & Reconstructive Surgical Clinic, P.A., 124 B.R. 784, 786 (D. Minn. 1990) (quoting United States ex rel. Harrison v. Estate of Deutscher (In re H&S Transp. Co.), 115 B.R. 592, 599 (M.D Tenn. 1990)). "The ordinary course of business standard is intended to allow a debtor the flexibility it needs to run its business and respond quickly to changes in the business climate." Habinger, 124 B.R. at 786 (internal quotation marks omitted).

15. The Bankruptcy Code does not define "ordinary course of business." However, bankruptcy courts within the 8th Circuit have held that a transaction qualifies as "ordinary course" if it: (a) "is of a type that is commonly undertaken within the debtor's industry," Peltz v. Gulfcoast Workstation Grp. (In re Bridge Info. Sys.), 293 B.R. 479, 486 (Bankr. E.D. Mo. 2003); and (b) is ordinary and consistent with the reasonable expectations of creditors. Johnston v. First St. Cos. (In re Waterfront Cos.), 56 B.R. 31, 35 (Bankr. D. Minn. 1985). See also In re Bridge Info. Sys., Inc., 293 B.R. at 486 (courts look to "whether interested parties would reasonably expect[] the particular debtor in possession to seek court approval before entering into the questioned transaction"). A "fundamental characteristic of an 'ordinary' post-petition business transaction is its similarity to a pre-petition business practice." In re Commercial Mortg. & Fin. Co., 414 B.R. 389, 394 (Bankr. N.D. Ill. 2009) (quoting Martino v. First Nat'l Bank of Harvey (In re Garofalo's Finer Foods, Inc.), 186 B.R. 414, 425 (N.D. Ill. 1995). See also Comm. of

Asbestos Related Litigants v. Johns Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986) (finding that "the nature of the debtor's business prior to its Chapter 11 filing is compared to its course of conduct postpetition"). In determining whether a transaction is ordinary, two relevant factors are the type of business a debtor is engaged in as well as the size and nature of the business and transaction in question. In re H&S Transp. Co., 115 B.R. at 598. The Debtors will generally enter into transactions with ADM under the ADM Agreement of the same type as the prepetition transactions. Furthermore, the size and nature of the transactions will be similar to the prepetition activities, as will the Debtors' reasons for entering into the transactions.

16. As noted above, the Debtors believe that they are authorized to enter into transactions under the ADM Agreement in the ordinary course without further order of this Court. Although the Debtors believe that consummation of the transactions under the ADM Agreement is within the ordinary course of their businesses and that they can consummate these transactions without notice and a hearing, the Debtors nevertheless request that the Court enter an order authorizing them to enter into and perform under these transactions, in part because ADM may be unwilling to take any "risk" on the "ordinary course issue" fearing that any postpetition transaction may later be avoided under section 549 of the Bankruptcy Code. Alternatively, if the transactions under the ADM Agreement are deemed or determined not to be in the ordinary course of the Debtors' businesses, then the Debtors request that the Court enter an order pursuant to section 363(b)(1) of the Bankruptcy Code authorizing the Debtors to enter into transactions and perform under the ADM Agreement on a post-petition basis.

17. Section 363(b) of the Bankruptcy Code allows the debtors, after notice and hearing, to "use, sell, or lease, other than in the ordinary course of business, property of the

estate." 11 U.S.C. § 363(b)(1). A debtor's decisions to use, sell or lease assets outside the ordinary course of business must be based upon a sound business purpose. See In re Channel One Commc'ns, Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)). See also TLP Servs., LLC v. Stoebner (In re Polaroid Corp.), 460 B.R. 740, 741-42 (B.A.P. 8th Cir. 2011) (allowing a trustee, pursuant in part to section 363(b)(1), to use cash collateral to fund efforts to recover funds from third parties); accord Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070-71 (2d Cir. 1983) (requiring a "good business reason" to approve a sale pursuant to section 363(b)); In re W.A. Mallory Co. Inc., 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) ("This Court follows the 'sound business purpose' test when examining § 363(b) sales.") (citing WBQ P'ship v. Va. Dep't of Med. Assistance Servs. (In re WBQ P'ship), 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)); Official Comm. Of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that the sale of property of the estate is justified if it is supported by a good business reason); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a motion pursuant to section 363(b) of the Bankruptcy Code is "a good business reason").

18. Courts have consistently been reluctant to interfere with corporate decisions unless "it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." In re Farmland Indus., Inc., 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing In re United Artists Theatre Co., 315 F.3d 217, 233 (3d Cir. 2003), Richmond Leasing Co. v. Capital

Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985) and In re Defender Drug Stores, Inc., 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)). See also Crystalin, L.L.C. v. Selma Props., Inc. (In re Crystalin, L.L.C.), 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (holding that the business judgment rule may be satisfied "as long as the proposed action appears to enhance the debtor's estate.") (quoting Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 567 n.16 (8th Cir. 1997)) (emphasis in original, internal quotations and alterations omitted); Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 567 n.16 (8th Cir. 1997) (holding that "[w]here the [debtor's] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval 'as long as the proposed action appears to enhance the debtor's estate'") (quoting Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985) (internal alterations and quotations omitted)); Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (finding that "[c]ourts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence").

19. The Debtors submit that the requested relief represents a sound exercise of their business judgment, is necessary to avoid immediate and irreparable harm and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. If authorization to perform and enter into transactions under the ADM Agreement is not granted, the Debtors will be at a financial disadvantage vis-à-vis their competitors, and the Debtors will be unable to take advantage of their expertise in the industry and the common industry practice employed to hedge risk and manage expenses. As such, the Debtors respectfully request the entry of an order providing that the Debtors are authorized to enter into and consummate transactions under the ADM Agreement without further order of the Court.

***Authority to Pledge Collateral and Other Credit Support under Cleared Transactions***

20. The Debtors may be required in certain circumstances to provide credit support (collectively, "Credit Support") to ADM, including by prepaying obligations, pledging collateral, posting initial or variation margin or providing other forms of collateral to ADM. The Debtors thus request authority to provide necessary Credit Support to ADM in accordance with the ADM Agreement or otherwise agreed; provided, however, that the provision of Credit Support is consistent with the Debtors' postpetition debtor in possession financing facility (the "DIP Financing Agreement") and the A/R Facility. The Debtors believe that ADM was fully collateralized as of the Petition Date. The Debtors also believe that ADM is entitled to the protections of section 364(e) of the Bankruptcy Code.

21. In the absence of such relief, ADM may refuse to consummate transactions if the Debtors do not comply with their margin requirements. Therefore, to preserve the value of the Debtors' estates, the Debtors request the express authority to provide Credit Support under the ADM Agreement.

22. Section 364(c) of the Bankruptcy Code permits a debtor unable to obtain unsecured credit in the ordinary course of business under section 364(a) of the Bankruptcy Code to obtain credit (a) with priority over any or all administrative expenses specified in sections 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the estate that is not otherwise subject to a lien or (c) secured by a junior lien on property of the estate that is subject to a lien. To obtain secured credit on a postpetition basis, a debtor must demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (affirming lower court's approval of a loan made to the debtor under section 364(d) of the Bankruptcy Code). See also In re Ames Dept. Stores, Inc., 115 B.R. 34, 37

(Bankr. S.D.N.Y. 1990) (debtor must demonstrate inability to obtain unsecured credit to acquire approval of loan under section 364(c)). In making this showing, the Bankruptcy Code "imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." In re Snowshoe Co., 789 F.2d at 1088. See also In re Ames Dept. Stores, 115 B.R. at 40 (to obtain relief under section 364(c), "a debtor is not required to seek credit from every possible source"). Courts grant a debtor considerable deference in exercising its sound business judgment to obtain such credit, provided that the agreement is consistent with the provisions of, and policies underlying the Bankruptcy Code. See In re Farmland Indus., Inc., 294 B.R. at 879-81 (court may consider debtor's business judgment, among other things, in determining whether to approve postpetition financing under section 364).

23. Inability to provide Credit Support to ADM could cause disruption to the Debtors' operations and expose the Debtors to fluctuations in market prices. Further, with respect to those transactions under the ADM Agreement that are used for hedging purposes, any future posting of collateral will not result in any net loss to the Debtors. ADM will realize on its collateral only if the Debtors owe ADM money. The Debtors will owe money to ADM for hedging transactions, and the collateral that will have been posted will be at risk, only when the prices of the subject of the hedge become favorable to ADM. In these situations, although the Debtors may owe money on account of the transaction, the Debtors' businesses will have benefited from the favorable price movements of the hedge in question. Consequently, the losses, if any, from the transaction that serve as a hedge on operating costs, will likely be offset by gains in the Debtors' operations. Thus, the benefits of the Debtors' hedging strategy at ADM can be realized only by the Debtors continuing their prepetition practices.

24. As stated above, the Debtors believe that performing transactions under the ADM Agreement is within the ordinary course of their businesses. Accordingly, providing Credit Support is also within the ordinary course of the Debtors' businesses. Moreover, the relief requested herein is in the best interest of the Debtors' estates and creditors.

25. Further, the Court may authorize the Debtors to provide Credit Support in accordance with the ADM Agreement pending assumption pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers a bankruptcy court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105. The purpose of section 105 of the Bankruptcy Code is to ensure the bankruptcy court has the power to take whatever action "is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 Collier on Bankruptcy ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2015). "Under [section 105 of the Bankruptcy Code,] the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing In re Ionosphere Clubs, Inc., 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989)).

26. In addition, under the "doctrine of necessity," courts allow the immediate payment of prepetition claims where such payment is essential to the debtor's continued operations. See In re Wehrenberg, Inc., 260 B.R. 468, 469 (Bankr. E.D Mo. 2001) ("Pursuant to 11 U.S.C. § 105(a) the Court may authorize the payment of prepetition claims when such payments are necessary to the continued operation of the Debtor."); In re United Am., Inc., 327 B.R. 776, 782 (Bankr. E.D. Va. 2005) (acknowledging the existence of the doctrine of necessity "because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any part of its prepetition claim"); accord In re Boston & Me. Corp., 634 F.2d 1359, 1382

(1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation).

Here, the ADM Agreement was fully collateralized as of the Petition Date. To the extent additional Credit Support is required under the ADM Agreement due to post-petition market movements or new trades, the Debtors seek the authority to provide such Credit Support immediately to ADM in accordance with their clearing relationship.

***The Debtors Should be Authorized to Assume the ADM Agreement***

27. The ADM Agreement constitutes an executory contract that the Debtors may assume under section 365(a) of the Bankruptcy Code. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). See also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 521 (1984) superseded by statute on other grounds, Pub. L. No. 98-353, § 541(a), 98 Stat. 390 (July, 10, 1984) Codified at 11 U.S.C. § 1113; Cameron v. Pfaff Plumbing & Heating, Inc., 966 F.2d 414, 415 (8th Cir. 1992). Assumption or rejection of an executory contract by a debtor is subject to review under the business judgment standard. See In re Food Barn Stores, Inc., 107 F.3d at 567 n.16; In re Gateway Apparel, Inc., 210 B.R. 567, 570 (Bankr. E.D. Mo. 1997). "The purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property." In re Tama Beef Packing, Inc., 277 B.R. 407, 413 (Bankr. N.D. Iowa 2002) (quoting Orion Pictures Corp. v. Showtime Networks (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993)).

28. Courts regularly approve debtors' proposed assumptions or rejections upon finding that such debtors have exercised their sound business judgment. See In re Crystalin, L.L.C., 293 B.R. at 463-64 (The business judgment test "is not an onerous one and does not require the bankruptcy court to place itself in the position of the trustee or debtor") (internal quotation marks omitted); accord In re Steaks to Go, Inc., 226 B.R. 35, 37 (Bankr. E.D. Mo. 1998) (noting that a court will generally approve of a rejection of an executory contract "if the rejection is based on the debtor['s] . . . best business judgment in the circumstances"). See also In re Audra-John Corp., 140 B.R. 752, 756 (Bankr. D. Minn. 1992) ("The [business judgment] test embodies considerable deference to the proponent of the rejection . . . so long as it can articulate sound business reasons for repudiating the contract.") (internal citation omitted); In re MF Global Holdings Ltd., 466 B.R. 239, 242 (Bankr. S.D.N.Y. 2012) ("Courts generally will not second-guess a debtor's business judgment . . . ."); Butler v. Resident Care Innovation Corp., 241 B.R. 37, 47 (D.R.I. 1999) ("[T]he reviewing court ought to defer to the Trustee's decision . . . unless the decision is so unreasonable that it could not be based on sound business judgment, but only on bad faith or whim.") (internal quotation marks omitted); In re G Survivor Corp., 171 B.R. 755, 758 (Bankr. S.D.N.Y. 1994) aff'd sub nom. John Forsyth Co. v. G Licensing, Ltd., 187 B.R. 111 (S.D.N.Y. 1995) ("a bankrupt's decision to reject an executory contract because of perceived business advantage requires that the decision be accepted by courts unless it is shown that the bankrupt's decision was one taken in bad faith or in gross abuse" of the debtor's retained business discretion); COR Route 5 Co. v. Penn Traffic Co. (In re Penn Traffic Co.), 524 F.3d 373, 383 (2d Cir. 2008) (The business judgment standard "presupposes that the estate will assume a contract only where doing so will be to its economic advantage and will reject contracts whose performance would benefit the counterparty at the expense of the estate").

29. As discussed above, the Debtors' decision to continue the ADM Agreement and enter into transactions thereunder is a sound exercise of the Debtors' business judgment. As part of the assumption, the Debtors will continue to perform under the ADM Agreement, including providing Credit Support as required. As with the Debtors' other business decisions related to continuation of the ADM Agreement, the Debtors' decision to assume the ADM Agreement satisfies the business judgment test. Thus, this Court should authorize the Debtors to assume the ADM Agreement under section 365 of the Bankruptcy Code.

**Requests for Immediate Relief and Waiver of Stay**

30. Pursuant to Rules 4001(c), 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek the entry of orders granting the relief requested by this Motion on an interim and final basis and, to the extent it applies, a waiver of any stay of the effectiveness of such order.

31. Bankruptcy Rule 4001(c) provides that, when presented with a motion for authority to obtain credit, the "court may conduct a hearing before [14 days after service of the motion], but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate including a motion to pay all or part of a claim that arose before the filing of the petition." Fed. R. Bankr. P. 6003(b). In other words, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may authorize the relief prior to the 22nd day following the Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale,

or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

32. As set forth above and in the Declaration of James A. Tichenor (the "Tichenor Declaration"), it is vital that the Court grant the relief requested herein and the Debtors submit that ample cause exists to justify: (a) the immediate entry of the order granting the relief sought herein pursuant to Bankruptcy Rules 4001(c) and 6003(b) to the extent that they apply; and (b) a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies, with respect to the order.

**Reservation of Rights**

33. Nothing contained herein or in the proposed order is intended or should be construed as: (a) an admission as to the validity of any claim, security interest or lien against any of the Debtors or non-Debtor affiliates; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim, security interest or lien on any grounds; (c) a promise or requirement to pay any claim; or (d) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

**Notice**

34. Notice of this Motion has been given to: (a) Davis Polk & Wardwell LLP and Bryan Cave LLP as counsel to Citibank, N.A. as Administrative Agent for the First Lien Secured Credit Facility and the Debtors' proposed debtor in possession secured credit facility; (b) Brown Rudnick LLP, as counsel to Wilmington Savings Fund Society, FSB as prospective trustee and collateral agent for the Secured Second Lien Notes; (c) Foley & Lardner LLP, as counsel to

Wilmington Trust Company as prospective Indenture Trustee for the Unsecured Notes;<sup>4</sup> (d) Robinson & Cole LLP, as counsel to U.S. Bank as resigning trustee and collateral agent for the Second Lien Notes, the Unsecured Notes and the Convertible Notes;<sup>5</sup> (e) counsel to any ad hoc committees; (f) the Debtors' 50 largest unsecured creditors; (g) Mayer Brown LLP, as counsel to PNC Bank, N.A., as Administrator under the Debtors' prepetition accounts receivable securitization facility; (h) the United Mine Workers of America; (i) the Office of the United States Trustee for the Eastern District of Missouri; (j) the Internal Revenue Service; (k) the Securities and Exchange Commission; (l) the United States Department of the Interior; (m) the United States Department of Labor; (n) the United States Attorney's Office for the Eastern District of Missouri; (o) Pension Benefit Guaranty Corporation; and (p) ADM (collectively, the "Notice Parties"). In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

**No Prior Request**

35. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with these chapter 11 cases.

---

<sup>4</sup> These include the: (i) 6.00% Senior Notes due November 2018; (ii) 6.50% Senior Notes due September 2020; (iii) 6.25% Senior Notes due September 2021; and the (iv) 7.875% Senior Notes due November 2026.

<sup>5</sup> These include the: (i) 6.00% Senior Notes due November 2018; (ii) 6.50% Senior Notes due September 2020; (iii) 6.25% Senior Notes due September 2021; (iv) 7.875% Senior Notes due November 2026; and the (v) Convertible Junior Subordinated Debentures due December 2066.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter an interim order, substantially in the form submitted to the Court, granting the relief requested herein on an interim basis; (ii) enter a final order, substantially in the form submitted to the Court, granting the relief requested herein; and (iii) grant such other and further relief to the Debtors as the Court may deem just and proper.

Dated: April 13, 2016  
St. Louis, Missouri

Respectfully submitted,

/s/ Steven N. Cousins  
Steven N. Cousins, MO 30788  
Susan K. Ehlers, MO 49855  
Armstrong Teasdale LLP  
7700 Forsyth Boulevard, Suite 1800  
Suite 1800  
St. Louis, MO 63105  
Telephone: (314) 621-5070  
Facsimile: (314) 621-5065  
Email: scousins@armstrongteasdale.com  
Email: sehlers@armstrongteasdale.com

Heather Lennox (*pro hac vice* pending)  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212

Amy Edgy (*pro hac vice* pending)  
Daniel T. Moss (*pro hac vice* pending)

Jones Day  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001-2113  
Telephone: (202) 879-3939  
Facsimile: (202) 626-1700

*Proposed Attorneys for Debtors  
and Debtors in Possession*

**SCHEDULE 1**

	<b>Debtor's Name</b>	<b>Debtor's EIN Number</b>
1.	Peabody Energy Corporation	13-4004153
2.	American Land Development, LLC	20-3405570
3.	American Land Holdings of Colorado, LLC	26-3730572
4.	American Land Holdings of Illinois, LLC	30-0440127
5.	American Land Holdings of Indiana, LLC	20-2514299
6.	American Land Holdings of Kentucky, LLC	20-0766113
7.	American Land Holdings of New Mexico, LLC	32-0478983
8.	American Land Holdings of West Virginia, LLC	20-5744666
9.	Arid Operations, Inc.	84-1199578
10.	Big Ridge, Inc.	37-1126950
11.	Big Sky Coal Company	81-0476071
12.	Black Hills Mining Company, LLC	32-0049741
13.	BTU Western Resources, Inc.	20-1019486
14.	Caballo Grande, LLC	27-1773243
15.	Caseyville Dock Company, LLC	20-8080107
16.	Central States Coal Reserves of Illinois, LLC	43-1869432
17.	Central States Coal Reserves of Indiana, LLC	20-3960696
18.	Century Mineral Resources, Inc.	36-3925555
19.	Coal Reserve Holding Limited Liability Company No. 1	43-1922737
20.	COALSALES II, LLC	43-1610419
21.	Colorado Yampa Coal Company, LLC	95-3761211
22.	Conservancy Resources, LLC	20-5744701
23.	Cottonwood Land Company	43-1721982
24.	Cyprus Creek Land Company	73-1625890
25.	Cyprus Creek Land Resources LLC	75-3058264
26.	Dyson Creek Coal Company, LLC	43-1898526
27.	Dyson Creek Mining Company, LLC	20-8080062
28.	El Segundo Coal Company, LLC	20-8162824
29.	Empire Land Holdings, LLC	61-1742786
30.	Falcon Coal Company, LLC	35-2006760
31.	Four Star Holdings, LLC	30-0885825
32.	Francisco Equipment Company, LLC	37-1805119
33.	Francisco Land Holdings Company, LLC	36-4831111
34.	Francisco Mining, LLC	30-0922117
35.	Gallo Finance Company, LLC	43-1823616
36.	Gold Fields Chile, LLC	13-3004607
37.	Gold Fields Mining, LLC	36-2079582
38.	Gold Fields Ortiz, LLC	22-2204381
39.	Hayden Gulch Terminal, LLC	86-0719481
40.	Highwall Mining Services Company	20-0010659
41.	Hillside Recreational Lands, LLC	32-0214135
42.	HMC Mining, LLC	43-1875853
43.	Illinois Land Holdings, LLC	26-1865197
44.	Independence Material Handling, LLC	43-1750064
45.	James River Coal Terminal, LLC	55-0643770
46.	Juniper Coal Company, LLC	43-1744675
47.	Kayenta Mobile Home Park, Inc.	86-0773596
48.	Kentucky Syngas, LLC	26-1156957
49.	Kentucky United Coal, LLC	35-2088769
50.	Lively Grove Energy, LLC	20-5752800
51.	Lively Grove Energy Partners, LLC	26-0180403
52.	Marigold Electricity, LLC	26-0180352
53.	Midco Supply and Equipment Corporation	43-6042249
54.	Midwest Coal Acquisition Corp.	20-0217640
55.	Midwest Coal Reserves of Illinois, LLC	20-3960648

	<b>Debtor's Name</b>	<b>Debtor's EIN Number</b>
56.	Midwest Coal Reserves of Indiana, LLC	20-3405958
57.	Midwest Coal Reserves of Kentucky, LLC	20-3405872
58.	Moffat County Mining, LLC	74-1869420
59.	Mustang Energy Company, LLC	43-1898532
60.	New Mexico Coal Resources, LLC	20-3405643
61.	NM Equipment Company, LLC	36-4821991
62.	Pacific Export Resources, LLC	27-5135144
63.	Peabody America, LLC	93-1116066
64.	Peabody Archveyor, L.L.C.	43-1898535
65.	Peabody Arclar Mining, LLC	31-1566354
66.	Peabody Asset Holdings, LLC	20-3367333
67.	Peabody Bear Run Mining, LLC	26-3582291
68.	Peabody Bear Run Services, LLC	26-3725923
69.	Peabody Caballo Mining, LLC	83-0309633
70.	Peabody Cardinal Gasification, LLC	20-5047955
71.	Peabody China, LLC	43-1898525
72.	Peabody Coalsales, LLC	20-1759740
73.	Peabody COALTRADE International (CTI), LLC	20-1435716
74.	Peabody COALTRADE, LLC	43-1666743
75.	Peabody Colorado Operations, LLC	20-2561644
76.	Peabody Colorado Services, LLC	26-3723774
77.	Peabody Coulterville Mining, LLC	20-0217834
78.	Peabody Development Company, LLC	43-1265557
79.	Peabody Electricity, LLC	20-3405744
80.	Peabody Employment Services, LLC	26-3730348
81.	Peabody Energy Generation Holding Company	73-1625891
82.	Peabody Energy Investments, Inc.	68-0541702
83.	Peabody Energy Solutions, Inc.	43-1753832
84.	Peabody Gateway North Mining, LLC	27-2294407
85.	Peabody Gateway Services, LLC	26-3724075
86.	Peabody Holding Company, LLC	74-2666822
87.	Peabody Holdings (Gibraltar) Limited	20-5543587
88.	Peabody IC Funding Corporation	46-2326991
89.	Peabody IC Holdings, LLC	30-0829603
90.	Peabody Illinois Services, LLC	26-3722638
91.	Peabody Indiana Services, LLC	26-3724339
92.	Peabody International Investments, Inc.	26-1361182
93.	Peabody International Services, Inc.	20-8340434
94.	Peabody Investments Corp.	20-0480084
95.	Peabody Magnolia Grove Holdings, LLC	61-1683376
96.	Peabody Midwest Management Services, LLC	26-3726045
97.	Peabody Midwest Mining, LLC	35-1799736
98.	Peabody Midwest Operations, LLC	20-3405619
99.	Peabody Midwest Services, LLC	26-3722194
100.	Peabody Mongolia, LLC	20-8714315
101.	Peabody Natural Gas, LLC	43-1890836
102.	Peabody Natural Resources Company	51-0332232
103.	Peabody New Mexico Services, LLC	20-8162939
104.	Peabody Operations Holding, LLC	26-3723890
105.	Peabody Powder River Mining, LLC	43-0996010
106.	Peabody Powder River Operations, LLC	20-3405797
107.	Peabody Powder River Services, LLC	26-3725850
108.	Peabody PowerTree Investments, LLC	20-0116980
109.	Peabody Recreational Lands, L.L.C.	43-1898382
110.	Peabody Rocky Mountain Management Services, LLC	26-3725390
111.	Peabody Rocky Mountain Services, LLC	20-8162706
112.	Peabody Sage Creek Mining, LLC	26-3730653
113.	Peabody School Creek Mining, LLC	20-3585831

	<b>Debtor's Name</b>	<b>Debtor's EIN Number</b>
114.	Peabody Services Holdings, LLC	26-3726126
115.	Peabody Southwest, LLC	20-5744732
116.	Peabody Southwestern Coal Company, LLC	43-1898372
117.	Peabody Terminal Holding Company, LLC	26-1087861
118.	Peabody Terminals, LLC	31-1035824
119.	Peabody Trout Creek Reservoir LLC	30-0746873
120.	Peabody Twentymile Mining, LLC	26-3725223
121.	Peabody Venezuela Coal Corp.	43-1609813
122.	Peabody Venture Fund, LLC	20-3405779
123.	Peabody-Waterside Development, L.L.C.	75-3098342
124.	Peabody Western Coal Company	86-0766626
125.	Peabody Wild Boar Mining, LLC	26-3730759
126.	Peabody Wild Boar Services, LLC	26-3725591
127.	Peabody Williams Fork Mining, LLC	20-8162742
128.	Peabody Wyoming Gas, LLC	20-5744610
129.	Peabody Wyoming Services, LLC	26-3723011
130.	PEC Equipment Company, LLC	20-0217950
131.	PG INVESTMENTS SIX, L.L.C.	43-1898530
132.	Point Pleasant Dock Company, LLC	20-0117005
133.	Pond River Land Company	73-1625893
134.	Porcupine Production, LLC	43-1898379
135.	Porcupine Transportation, LLC	43-1898380
136.	Riverview Terminal Company	13-2899722
137.	Sage Creek Holdings, LLC	26-3286872
138.	Sage Creek Land & Reserves, LLC	38-3936826
139.	School Creek Coal Resources, LLC	20-2902073
140.	Seneca Coal Company, LLC	84-1273892
141.	Seneca Property, LLC	36-4820253
142.	Shoshone Coal Corporation	25-1336898
143.	Southwest Coal Holdings, LLC	37-1794829
144.	Star Lake Energy Company, L.L.C.	43-1898533
145.	Sugar Camp Properties, LLC	35-2130006
146.	Thoroughbred Generating Company, L.L.C.	43-1898534
147.	Thoroughbred Mining Company LLC.	73-1625889
148.	Twentymile Coal, LLC	95-3811846
149.	Twentymile Equipment Company, LLC	38-3982017
150.	Twentymile Holdings, LLC	38-3937156
151.	United Minerals Company, LLC	35-1922432
152.	West Roundup Resources, LLC	20-2561489
153.	Wild Boar Equipment Company, LLC	32-0488114
154.	Wild Boar Land Holdings Company, LLC	36-4831131